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Administration of justice at the United Nations

Letter dated 18 July 2008 from the President of the Administrative Tribunal addressed to the President of the General Assembly

At a special plenary session held on 17 July 2008, the Administrative Tribunal resolved to express its concern about the absence of appropriate transitional measures in the draft statutes of the United Nations Dispute Tribunal and Appeals Tribunal, which are expected to be created with effect from 1 January 2009.

Several of the issues pertaining to the new tribunals are yet to be decided by the General Assembly. Accordingly, many matters remain unclear at the present time. The attention of the Administrative Tribunal has been drawn to an undated information circular calling for applications of candidates for judges for the new tribunals. Advertisements to similar effect have been published in the media, with a closing date for applications of 21 July 2008. The website to which potential candidates were directed for further information about the posts was still unavailable on 17 July.

To date, no information has been provided to the Administrative Tribunal or to its members individually on the following matters:

(a) Will serving members of the Administrative Tribunal be transferred to the new Appeals Tribunal for the unexpired periods of their terms of office?

(b) Will members of the Administrative Tribunal whose first four-year terms of office expire on 31 December 2008 be eligible for reappointment to the new Appeals Tribunal?

(c) Will members of the Administrative Tribunal whose second four-year terms of office expire on 31 December 2008 be eligible for membership in the new Appeals Tribunal?

(d) In the event that the new Dispute Tribunal and Appeals Tribunal do not take over the existing case load of the Administrative Tribunal with effect from 1 January 2009 and the work of the Administrative Tribunal continues, will the terms of the current members whose terms expire on 31 December 2008 be extended

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or will new members be elected by the General Assembly to replace the retiring members, and if so for what terms?

(e) Will candidates who have at least 15 years of professional experience, not all of it in a judicial capacity, be considered eligible for appointment?

The Tribunal's concerns about each of these matters are as follows:

1. Members of the Administrative Tribunal are appointed by the General Assembly. Article 3.5 of the statute of the Tribunal states that: "No member of the Tribunal can be dismissed by the General Assembly unless the other members are of the unanimous opinion that he or she is unsuited for further service".

This provision has the important function of ensuring the tenure and independence of the members of the Tribunal. A resolution by the General Assembly to terminate the appointments of serving members without transferring them to the new Appeals Tribunal would violate article 3.5. Moreover, if serving members are expected to apply for membership of the new Appeals Tribunal and to submit an example of a judgment delivered by them, as well as the names of referees, this would seriously undermine their independence. Bearing in mind that the Internal Justice Council includes staff and administration nominees who have appeared and who are currently before the Tribunal, the appearance may be given that those who have been or will be the subject of the Tribunal's judgments will have the opportunity to deny individual judges further appointment. For that reason, serving members would find it invidious to apply for posts in the new Appeals Tribunal, while discharging their current responsibilities as members of the Administrative Tribunal. The proper solution to this problem would have been to transfer serving members to the new Appeals Tribunal for the unexpired periods of their office (it is noted that the functions of the new Appeals Tribunal are virtually identical to those of the present Administrative Tribunal save as to the body from whose decisions applications can be made). This would also have the advantage of ensuring the continuity and rotation of membership of the new Appeals Tribunal because each of the serving members has a different remaining term of office.

2. Similar considerations to those in paragraph 1 above apply, because these members have a legitimate expectation of reappointment by the General Assembly on the expiry of their first term.

3. Although these members who have served two terms have no such expectation, the statutes of the new Dispute and Appeals Tribunals should make it clear whether or not such persons will be considered as eligible for appointment.

4. Two of the current seven members of the Administrative Tribunal are due to retire at the end of their second term on 31 December 2008, and one will have finished his first term and be eligible for reappointment at that time. This leaves only four serving members. The Tribunal is obliged under its article 3.1 to sit in panels of three, and there is a considerable backlog in its work. If the Administrative Tribunal is to continue for any length of time, provision will need to be made for filling vacancies. In addition, provision needs to be made for the remuneration of members who are asked to clear the backlog.

5. Article 3.1 of the statute of the Administrative Tribunal requires members to "possess judicial experience in the field of administrative law or its equivalent within their national jurisdiction" but contains no stipulation as to the length of time during which such experience is required. Article 3.3 (b) of the draft statute of the Appeals Tribunal requires "at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions". The present requirement allows flexibility, for example in the case of a person who has lengthy and extensive professional experience in the field of administrative law or its equivalent, but not all of it in a judicial capacity. The requirement of an arbitrary number of years in a particular capacity may adversely affect candidates who, for a variety of reasons, have been unable to acquire the required number of years in a judicial capacity but have extensive professional experience of other kinds, for example as practicing lawyers. The Administrative Tribunal has found that members with such experience can make a valuable contribution to its work at an appellate level.

The General Assembly is requested to give urgent consideration to these transitional matters before it approves the draft statutes of the new tribunals. Accordingly, I should be grateful of you would have the present letter circulated as a document of the General Assembly under item of the provisional agenda, "Administration of justice at the United Nations".

(*Signed*) Spyridon **Flogaitis**
President
United Nations Administrative Tribunal